UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LENORE VANDERPOOL, Plaintiff, v. WALMART and DOES 1-10 inclusive, Defendants.	**COMPLAINT** JURY TRIAL DEMANDED

INTRODUCTION

1. This action arises out of Defendant Walmart and agents ("Defendants") repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA") and the Georgia Fair Business Practices Act, O.C.G.A § 10-1-390 *et seq*. ("FBPA").

2. Defendant Walmart placed telephone calls to Plaintiff's cellular telephone.

3. Plaintiff told Defendant Walmart to stop calling.

4. Defendant Walmart continued to call her cellular telephone after being told to stop calling.

5. All of these telephone calls were made using an automatic telephone dialing system as defined at 47 U.S.C. § 227(a)(1).

6. Some of these telephone calls were made using prerecorded messages.

7. Defendant Walmart placed telephone calls to Plaintiff's cellular telephone.

8. Plaintiff told Defendant Walmart to stop calling.

9. Defendant Walmart continued to call her cellular telephone after being told to stop calling.

10. All of these telephone calls were made using an automatic telephone dialing system as defined at 47 U.S.C. § 227(a)(1).

11. All of these telephone calls were made using prerecorded messages as defined at 47 U.S.C. § 227(a)(1).

12. All of these telephone calls were made using an automatic telephone dialing system as defined at 47 U.S.C. § 227(a)(1).

13. All of these telephone calls were made using prerecorded messages as defined at 47 U.S.C. § 227(a)(1).

JURISDICTION

14. Jurisdiction of this Court arises under 28 U.S.C. § 1331, 47 U.S.C. § 227, and pursuant to 28 U.S.C. § 1367 for pendent state law claims, which are predicated upon the same facts and circumstances that give rise to the federal causes of action.

15. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, and state law during their illegal efforts to collect a consumer debt.

16. Venue is proper in this District because the Defendants may be found in this District, and some of the acts and transactions occurred in this District.

PARTIES

17. Plaintiff Lenore Vanderpool (hereinafter "Plaintiff") is a citizen and resident of Henry County.

18. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (10).

19. Plaintiff received multiple collection communications from and on behalf of Defendants while in Georgia on a cellular telephone that is the subject of this litigation.

20. Defendant Walmart conducted business in Georgia.

21. Defendant Walmart is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (10).

22. Defendant Walmart conducts business within Georgia.

23. Defendant Walmart is, and at all times mentioned herein is, a "person" as defined by 47 U.S.C. § 153 (10).

24. Does 1-10 (the "Agents") are individual agents employed by Defendant Walmart whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

FACTUAL ALLEGATIONS

Summary

25. All of the above-described collection communications made to Plaintiff by collection employees employed by Defendant Walmart were made in violation of numerous and multiple provisions of the FDCPA, including but not limited to all of the above mentioned provisions by the use of repeated calls.

26. These autodialed collection calls disrupted Plaintiff's solitude.

27. Within the last four years, Defendants placed numerous telephone calls to Plaintiff's cellular telephone, number ending in 3247.

28. Plaintiff also specifically told Defendants on numerous occasions to stop calling her cell phone number.

29. Nevertheless, the calls continued.

30. All of these calls were made using an "automatic telephone dialing system" as defined at 47 U.S.C. § 227(a)(1) and as explained in subsequent FCC regulations and orders. The system(s) used by Defendants have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

31. The calls contained prerecorded messages.

32. This is evidenced by:

- The frequency of the calls;

• The persistence of the calls;

• An unnatural period of silence upon Plaintiff answering many of these calls;

• "Dead air" calls. Many of the calls from Defendants' telephone numbers had no agent on the other line when Plaintiff answered.

• Plaintiff's inability to stop the calls.

• Pre-recorded messages upon answering the calls and voicemail.

33. All of the above makes plausible that Defendants' calls used equipment that meets the definition of an "automatic telephone dialing system" in making calls to Plaintiff.

34. In particular, dead air calls, and unnatural periods of silence are indicative of a "predictive dialer," which is an automatic telephone dialing system under the statute.

35. Plaintiff has suffered actual injury as a result of Defendants' telephone calls, including, but not limited to, reduced device storage space, data usage, plan usage, tied up telephone line, lost time tending to the unwanted telephone calls and responding to Defendants' unlawful conduct, and the invasion of privacy by calls continuing after she informed Defendants to stop calling.

36. Plaintiff is entitled to statutory damages and injunctive relief.

TRIAL BY JURY

37. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues so triable. US Const. amend. 7. Fed.R.Civ.P. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 et seq.

38. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

39. Defendants placed repeated calls to Plaintiff on her cellular telephone.

40. Defendants knew, or should have known, that it was calling a cellular telephone.

41. These calls all used an automatic telephone dialing system.

42. Defendants knew that their calls used an automatic telephone dialing system.

43. These calls were all made in an effort to collect a debt.

44. Plaintiff also told Defendants on multiple occasions to stop calling.

45. Defendants therefore knew or should have known that it did not have consent to call Plaintiff's cellular telephone.

46. The calls were not placed for "emergency purposes."

47. Plaintiff is entitled to an award of $500 in statutory damages for each call, pursuant to 47 U.S.C. § 227(b)(3)(B).

48. Plaintiff is entitled to an award of treble damages in an amount up to $1,500 for each call made knowingly and/or willfully, pursuant to 47 U.S.C. § 227(b)(3).

COUNT II.

VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT ("GFBPA"), O.C.G.A. § 10-1-390, *et seq.*

49. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

50. The Defendants' actions in attempting to collect a debt have taken place in the conduct of consumer acts or practices.

51. Defendants violated the GFBPA by use of unlawful acts and practices within the meaning of O.C.G.A. § 10-1-393.

52. Defendants acted intentionally in violating the GFBPA.

53. Plaintiff suffered damages because of Defendants' violations of the GFBPA as described above and to be further established at trial.

54. Defendants have no property within the state of Georgia.

55. Plaintiff is entitled to the recovery of reasonable attorney's fees pursuant to O.C.G.A. § 10-1-399.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

- for an award of costs of litigation and reasonable attorney's fees pursuant to Georgia Fair Business Practices Act against Defendants;
- for an award of statutory damages of $500.00 per call pursuant to 47 U.S.C. § 227(b)(3)(B) against Defendants; and
- for an award of treble damages of $1,500.00 per call pursuant to 47 U.S.C. § 227(b)(3) against Defendants.

This 22nd day of March, 2017

Respectfully submitted,

JOSEPH P. MCCLELLAND, LLC

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.l B. This Motion has been prepared in Times New Roman font, 14 point.

This 22nd day of March, 2017.

Respectfully submitted,

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